

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 401 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ABDULGANI ALIAS GANI DHOBI MAHMADBHAI SHAIKH

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner

MR HL JANI AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 28/07/98

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the order dated 16.1.1998 passed by the Police Commissioner, Baroda city under sec. 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985.

In the grounds of detention supplied to the

petitioner, the detaining authority has placed reliance on 2 pending trial cases and one case which is at the investigating stage for the alleged offence committed by the petitioner under Bombay Prohibition Act. Over and above these prohibition cases, a further reliance is also placed on the statements of three witnesses for the alleged incidents dated 10.11.1997, 31.10.1997 and 18.12.1997. In all the incidents, the concerned witnesses were beaten when concerned witnesses did not permit the petitioner to store the liquor kerbas in his house, or on the ground that the concerned witness is an informant to the police, or on the ground that the concerned witness refused to deliver the bags containing liquor to a particular destination. On all the occasions, many people gathered to watch the incidents of beating, however, all started running helter and skelter, when the petitioner and his associates started running towards them with open swords/gupti, the people took shelters to nearby houses and closed doors and windows and shop keepers as well as Larri-gallas keepers also closed their business and an atmosphere of terror and fear was created. Considering this material, the detaining authority has recorded a finding that the petitioner is a bootlegger within the meaning of sec. 2(b) of the Act, and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, the detention order is necessary.

The Supreme Court in Piyush Kantilal Mehta vs. Commissioner of Police, Ahmedabad city, AIR 1989 SC 491 on similar allegations made against the detenu in that case has held that the offences alleged against the detenu in the order of detention and also the allegations made by the witnesses could not be said to have created any feeling of insecurity or panic or terror among the members of the public of the area giving rise to the question of maintenance of public order. The order of detention could not therefore be upheld. In view of this decision, it is not possible for me to uphold the order of detention in the present case. The allegations made against the petitioner by the witnesses are minor incidents of beating by the petitioner and which could not be said to create feeling of insecurity among the general public. IN view of this, the order of detention is vitiated.

In the result, this petition is allowed. The impugned order dated 16.1.1998 is set aside. The petitioner is ordered to be released forthwith, if he is not required for any other lawful reason. Rule made absolute.

(K. R. VYAS, J.)